

David L. Mazaroli (DM-3929)
Attorney for Plaintiff
11 Park Place – Suite 1214
New York, NY 10007-2801
Tel. (212)267-8480
Fax. (212)732-7352
e-mail: dlm@mazarolilaw.com

-----X
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

MITSUI SUMITOMO INSURANCE CO. LTD.

Plaintiff,

- against -

EVERGREEN MARINE CORPORATION;
UNION PACIFIC RAILROAD COMPANY;

Defendants.
-----X

:

: 07 Civ. 3874 (CM)

:

:

:

:

**DECLARATION OF
CHIKARA YOKOI
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, Chikara Yokoi, declare as follows:

1. I am employed as a Vice President of MSI Claims (USA) ("MSI-USA") Inc., the third-party claims administrator of plaintiff Mitsui Sumitomo Insurance Co. Ltd. ("Mitsui"), and have been so employed since April 2004. I respectfully submit this declaration in support of plaintiff's motion for partial summary judgment.

2. Since assuming my present position with MSI-USA my day-to-day duties have included the investigation and adjustment of insurance claims presented by Mitsui's insureds for damage to or loss of cargo during transportation. I was personally involved in the investigation and adjustment of the insurance claim presented to MSI-USA as the third-party claims administrator for Mitsui as a result of the derailment which is the

subject of this court action. I was also involved in the decision by Mitsui to pay the insurance claim. Accordingly I am familiar with the documents which were received and maintained by MSI-USA in connection with the insurance claim. I am also familiar with the terms of the insurance coverage applicable to the shipment and the payment made by Mitsui for the insurance claim.

3. Mitsui was the insurer of the shipment of automotive motors and parts (hereinafter the "Shipment") which is the subject of this court case. Pursuant to an open cargo policy which was in effect in 2006 and at the time of the subject Shimuzu, Japan, to Statesville, North Carolina, intermodal transportation, Mitsui insured the Shipment against risk of loss and damage during transportation, including the type of damage and loss which arose as a result of the derailment.

4. In or about April of 2006 Asmo North Carolina, Inc. ("Asmo NC") presented an insurance claim to Mitsui in care of MSI-USA for damage to and loss of part of the Shipment said to have arise from the reported derailment of a Union Pacific Railroad Company train in Arkansas on or about April 5, 2006.

5. In support of its insurance claim Asmo NC submitted to MSI-USA copies of certain business records pertaining to the Shipment, including the Evergreen Marine Corporation Sea Waybill EISU025643005523, ASMO Co. Ltd. Invoice XBC90391 in the FOB JAPAN amount of \$455,464.56, and the corresponding packing list. As part of my duties I maintained copies of said business records in the file of MSI-USA and reviewed the records in the process of investigating and adjusting the insurance claim.

6. The investigation of the claim conducted by MSI-USA included the hiring of an independent surveyor, T.M. Cargo Inc. of Brentwood, Tennessee, to inspect the

Shipment and investigate the cause and extent of the claimed cargo damage and loss. A copy of the T.M. Cargo Inc. survey report dated December 18, 2006 signed by surveyor Bennie Greiner is included in the annexed **Exhibit 1** together with a copy of the surveyor's bill paid by Mitsui. The T.M. Cargo Inc. report was received and maintained by MSI-USA in the regular and ordinary course of business and was relied on in the adjustment and payment of the subject insurance claim.

7. Based on the investigations conducted the insurance claim of Asmo NC was paid by Mitsui in the amount of \$422,129.33. The calculation of this amount is set forth in the Statement of Adjustment dated December 21, 2006, copy annexed hereto as **Exhibit 2**, which I prepared in the regular and ordinary course of my duties.

8. The insurance payment amount is based in part on the \$382,415.06 invoice value, plus applicable insured value advance, for the portion of the Shipment which sustained damage or loss. In addition the adjustment outlines the \$3,650.64 in incidental expenses which were included in the claim and the \$10,777.20 in salvage proceeds which were deducted from the claim amount.

9. Annexed hereto as **Exhibit 3** is a copy of the subrogation receipt executed by Asmo NC for the \$422,129.33 insurance claim payment by Mitsui. This document was maintained by MSI-USA in the regular and ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 26, 2007 at New York, New York.


Chikara Yokoi